

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17606-B of Dakota Points LLC, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure uniform height provisions under section 411, to construct a four-story residential building in the C-2-A District at premises 5545-5549 South Dakota Avenue, N.E. (Square 3760, Lot 10) and 5553-5575 South Dakota Avenue, N.E. (Parcel 137/86).

Hearing Date: May 8, 2007
Decision Date: May 8, 2007
Final Date of Order: May 9, 2007
Decision on Motion to Extend Order: March 24, 2009

ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER 17606-A

The Underlying BZA Order

On May 8, 2007, the Board approved the Applicant's request for a special exception from the roof structure requirements of § 411 of the Zoning Regulations. Given that there were no opposing parties, the Board authorized a bench decision and summary order, which was issued on May 9, 2007 (BZA Order 17606). Because of a minor error in the caption of this Order, the Board issued a Corrected Summary Order (17606-A), to accurately reflect that the proposal was for a 4-story residential building, and not a four unit residential building. The Corrected Summary Order was also dated May 9, 2007.

Under the Corrected Summary Order, and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued – until May 9, 2009.

Section 3130.1 states:

No order [of the Board] authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility (EEF), unless within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit.

(11 DCMR § 3130.1)

Motion to Extend

On March 6, 2009, the Board received a letter from the Applicant indicating that it had not yet applied for a building permit, and that it would not be able to do so prior to May 9, 2009 when the Order was set to expire. According to the Applicant, despite strong efforts, “the Property Owners ha[d] not been able to a[quire] financing which would allow the preparation of construction plans and the filing of their building permit applications.” The Applicant asserted that this was due to the unprecedented negative economic circumstances impacting development in the District of Columbia in general.

Accordingly, the Applicant requested that:

- A. Pursuant to § 3100.5 of the Regulations, the Board waive the provisions of § 3130.1, which limits the validity of the underlying Order to two years from the date of its issuance, thereby allowing the Applicant additional time to apply for a building permit; **or**,
- B. The Board extend the underlying Order for a period of two years from May 9, 2009.
- C. The Board toll the expiration date for the underlying Order from the date the motion to extend was filed.

Criteria for Evaluating Motion to Extend

Section 3100.5 of the Regulations states in full:

Except for §§ 3100 through 3105, 3121.5 and 3125.4, the Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

(11 DCMR § 3100.5)

The Board finds that the Applicant has met the criteria set forth in this provision. The Applicant’s inability to secure financing and the poor economic conditions in the District constitutes the “good cause” required under § 3100.5. The Board also finds that a waiver in this case would not prejudice the rights of any party and is not otherwise prohibited by law. Neither the ANC nor any nearby property owners objected to an extension of the Order; and as noted above, there were no opposing parties at the time the underlying Order was decided. Since granting the initial request for relief did not prejudice the rights of any party, the Board concludes that the extension of that relief, likewise, will not be prejudicial.

Regarding the Applicant’s request to toll the expiration of the underlying Order, the Board finds that the expiration was tolled at the time the Applicant’s motion was filed.

BZA APPLICATION NO. 17606-B
PAGE NO. 3

Accordingly, the Board hereby waives the limitation in § 3130.1 of the Regulations and extends the validity of the underlying Order for a period not to exceed two years from the current expiration date, thereby establishing a new expiration date of May 9, 2011.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this request for extension of time be **GRANTED** until May 9, 2011.

VOTE: **3-0-2** (Ruthanne G. Miller, Marc D. Loud, and Shane L. Dettman to approve; Mary Oates Walker not participating, not voting; and no member of the Zoning Commission participating or voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

ATTESTED BY: _____


RICHARD S. NERO, JR.
Acting Director, Office of Zoning

FINAL DATE OF ORDER: APR 07 2009

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL

BZA APPLICATION NO. 17606-B
PAGE NO. 4

AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

SG/TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17606-B

As Director of the Office of Zoning, I hereby certify and attest that on **APRIL 7, 2009**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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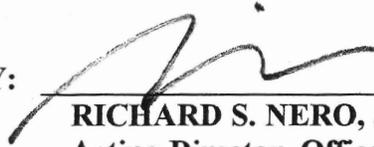
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BZA APPLICATION NO. 17606-B
PAGE NO. 2

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ATTESTED BY:



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